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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,412	10/21/2003	Charles W. Krespach	242-321	5950
7590 Robert H. Earp, III McDonald, Hopkins Co., LPA 600 Superior Avenue E. Suite 2100 Cleveland, OH 44114-2653				
EXAMINER				
WINNER, TONY H				
ART UNIT		PAPER NUMBER		
3611				
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05/29/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/690,412

Applicant(s)

KRESPACH ET AL.

Examiner

Tony H. Winner

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 39-41 is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 8, 9, 17-19, 22, 23 and 36-39 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 24, and 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Acknowledgment

1. Receipt of the amendment filed 2/19/90 has been acknowledged and entered.
New claims 36-41 have been added.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Dear (USPN. 2,549,178).

Dear discloses all of the structural (figure 1) as claimed, the a towing assembly, comprising:

- a. a hitch ball receiver (17) having at least one acircular recess (adjacent numeral 28) having a sidewall, wherein said recess is a channel;
- b. a hitch ball (12);
- c. a base (27) integrally formed with the hitch ball, the base having perimeter, wherein a substantial portion of the perimeter of the base is engageable with the sidewall of the recess to prevent rotation of the hitch ball during installation;
- d. wherein said hitch ball receiver includes a first face and a second face, where structure (22) is attached, said recess being provided in said first face;
- e. wherein a second recess is provided on second face; and

f. wherein the hitch ball receiver is a hitch bar (19).

Regarding claims 4-5, 8-9, and 17-19, and 22-23 Dear discloses all of the claimed limitations.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eaton (USPN. 3,876,242) in view of Templeman (USPN. 4,56,345).

Eaton discloses a trailer hitch system (figure 1), the structure comprising:

- a. a hitch ball (10) having a base (12) integrally formed therein;
- b. a shank extending from the base of the hitch ball;
- c. a hitch ball receiver (14) having at least recess wherein the base is engageable with the recess during installation; and
- d. an aperture (22) in the hitch receiver shaped and sized to receive the shank of the hitch ball, wherein the aperture has a perimeter (adjacent numeral 22), and further wherein a substantial portion of the perimeter of the aperture is surrounded by the recess.

Eaton does not teach an acircular recess with anti-rotation means when the base is engageable with the recess.

Templeman discloses a mirror assembly for a vehicle, the structure comprising:

a. a ball (25) with integrally formed base member (38) that includes structure that when mating with an acircular recess with of the base (7) would to prevent rotation between the two members.

Based on the teaching of Templeman, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the hitch ball's base and the recess of Eaton to include the engageable member with acircular recess hitch ball receiver of Templeman so as to provide a positive locking, thus, preventing relative rotation between two members.

With regard to claims 37-38, Eaton as modified by Templeman discloses all of the claimed limitations.

Response to Arguments

4. Applicant's arguments filed 2/19/09 have been fully considered but they are not persuasive.

The following are the applicants' arguments listed in alphabetical order.

a. Dear does not disclose "at least one acircular recess having sidewall and substantial portion of the perimeter of the base is engageable with the sidewall of the recess to prevent rotation;

The Examiner takes position that Dear, figure 1 and particularly figure 2, shows an acircular recess when view from the top of lug (28) and a substantial portion of the non circular structure (27) is engageable with the side wall (side of the lug).

b. Eaton does not teach a hitch ball engageable with the cavity to prevent rotation and the use of non analogous art/reference (Templeman) to modify Eaton is improper hindsight.

In response it has been held that the determination that a reference is from a nonanalogous art is two fold. First, a determination if the reference is within the field of the inventor's endeavor. If it is not, the next process is to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. In this case, the reference to Templeman is solving the same problem as the claimed invention and that the structure having the same connection (i.e. base member (38) that includes structure that when mating with an acircular recess of the base (7) would to prevent rotation between the two members.) Further, as noted by KSR:

Common sense teaches, however, that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.

KSR, 127 S. Ct. at 1742, 82 USPQ2d at 1397; Smith, 83 USPQ 2d at 1517.

Allowable Subject Matter

5. Claims 6-7 and 24-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims.

6. Claims 39-41 are allowed.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Anthony H. Winner whose telephone number is (571) 272-6654. The examiner can normally be reached on Monday-Friday from 9:30 am to 6:30 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris, can be reached on (571) 272-6651. Currently, the fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information-Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6584.

/Tony H. Winner/
Primary Examiner, Art Unit 3611
May 27, 2009